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Attorneys for Defendant
KELLER WILLIAMS REALTY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY
TOWERS, LLC, a California corporation, THOMAS)
CIRRITO, and individual, ATOCHA LAND, LLC,)
a Delaware limited liability company, MICHAEL)
CIRRITO, and individual, and CIRRITO)
HOLDINGS, LLC, a Delaware limited liability)
company,)

Plaintiffs,)

vs.)

RONALD BUCHHOLZ, CHARICE FISCHER,)
RDB DEVELOPMENT, LLC, a Nevada limited)
liability company, SOLOMON CAPITAL, LLC, a)
Nevada limited liability company, JONATHON)
VENTO, GRACE CAPITAL, LLC, dba GRACE)
COMMUNITIES, an Arizona limited liability)
company, DONALD ZELEZNAK, Z-LOFT, LLC,)
an Arizona limited liability company, ZELEZNAK)
PROPERTY MANAGEMENT, LLC dba KELLER)
WILLIAMS REALTY, INC., a Texas corporation,)
and DOES 1-50, inclusive,)

Defendants.)

CASE NO. C08-2248 RMW
[Assigned Judge: Hon. Ronald Whyte]

**DEFENDANT KELLER WILLIAMS
REALTY, INC.'S REPLY BRIEF IN
SUPPORT OF MOTION TO
DISMISS COUNTS 3, 4, 5, 6, 11, 16
AND 18 OF PLAINTIFFS'
COMPLAINT**

Accompanying Papers: Objections to
Extrinsic Evidence Submitted in
Plaintiffs' Opposition and Motion to
Strike; [Proposed] Order Striking
Extrinsic Evidence

Hearing Date: September 5, 2008
Time: 9:00 A.M.
Location: Courtroom 6
Judge: Hon. Ronald Whyte

I. INTRODUCTION

Plaintiffs' Complaint, on its face, fails to state any claim for relief against Keller Williams Realty, Inc. ("KWRI"). Despite Plaintiffs' attempts to reframe the appropriate standards for considering an FRCP 12(b)(6) Motion to Dismiss, the issue before this Court is simply whether the claims as stated, assuming them to be true, are sufficiently pled. Plainly,

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they are not. Specifically, plaintiffs have failed to properly plead Counts 3, 4, 5, 6, 11, 16 and 18 as against KWRI. Instead of addressing the pleading deficiencies asserted by KWRI's motion or offering bases to allow for the amendment of the Complaint, Plaintiffs' Opposition improperly focuses on evidence beyond the four corners of the pleadings. Such extrinsic evidence should not be considered by this Court. Accordingly, Plaintiffs' failure to state any legally cognizable claims for relief against KWRI warrants the dismissal of the Complaint with prejudice as against KWRI.

II. PLAINTIFFS' COMPLAINT FAILS TO STATE ANY CLAIM FOR RELIEF AS AGAINST KELLER WILLIAMS REALTY, INC.

A. Any Extrinsic Evidence Argued in Plaintiffs' Opposition is Improper for Consideration on this Motion.

The face of the plaintiffs' complaint, and the exhibits attached thereto control the Rule 12(b)(6) inquiries. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir.1996); *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.1995). In ruling on an FRCP 12(b)(6) motion, the district court cannot consider "new" facts alleged in plaintiff's opposition papers. *Schneider v. California Dept. of Corrections* 151 F.3d 1194, 1197 (9th Cir. 1998) (held that such allegations are irrelevant for Rule 12(b)(6) purposes and cited 2 Moore's Federal Practice, § 12.34[2] (Matthew Bender 3d ed.) ("The court may not ... take into account additional facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do not constitute pleadings under Rule 7(a)."). Plaintiffs' Opposition inappropriately attempts to introduce pages upon pages of information not contained in the Complaint. Any information extrinsic from the Complaint, including the declarations of Jesshill E. Love and Thomas Cirrito, and the exhibits thereto, should be stricken and not considered by this Court in ruling on KWRI's Motion. See attached Objections to Extrinsic Evidence and Motion to Strike.

B. Plaintiffs' Complaint Fails to Sufficiently Plead Any Basis for Vicarious Liability of KWRI.

All of Plaintiffs' claims against KWRI hinge on the conclusory allegation that KWRI is vicariously liable for the actions of other Defendants. Because Plaintiffs fail to properly allege any agency relationship of KWRI, Plaintiffs' entire Complaint, without more, is fatally deficient.

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Paragraphs 3, 29 and 79 of the Complaint are the only allegations of any substance alleged against KWRI. Paragraphs 3 and 79 simply label KWRI, along with defendants ZPM and Zeleznak, as “agent and broker.” Paragraph 29 alleges that “KELLER WILLIAMS is vicariously liable for the actions of its franchisee, ZPM...” None of these allegations supports, even at the pleadings stage, a sufficient claim of agency of any sort. Plaintiffs’ Opposition further demonstrates that the Complaint falls short of the requirements for pleading agency. By Plaintiffs’ own admission, the Complaint does not sufficiently plead any agency theory.

Plaintiffs’ Opposition concedes that their agency claim is not based upon a franchise agency relationship (which is apparent from the conclusory allegations of Paragraphs 3, 29 and 79), and for the first time makes an ostensible agency argument as against KWRI. Plaintiffs’ Opposition outlines the elements of an ostensible agency theory (citing *Associated Creditors’ Agency v. Davis*, 13 Cal.3d 374 (1975)) yet fails to identify any part of the Complaint that satisfies the elements of such a theory because none exists. Plaintiff’s Opposition, (“Opp.”) pages 7 through 9.

Kaplan v. Coldwell Banker, which Plaintiffs glom onto in their Opposition does not help Plaintiffs overcome the deficiencies in their Complaint. Cal.App.4th 741 (1997). If anything, *Coldwell Banker* highlights what Plaintiffs’ Complaint is lacking. The Court in *Coldwell Banker* reviewed the appeal of a summary judgment motion, determining whether there was a triable fact as to liability under an agency theory. Although the pleadings were not the primary focus of the *Coldwell Banker* opinion, the Court did address the allegations in appellants’ Complaint, which, unlike the Complaint here, at least alleged the elements of the alleged agency relationship. 59 Cal.App.4th 741, 744, 745. Plaintiffs’ Opposition conveniently ignores the glaring fact that their own Complaint fails to allege any facts to support an ostensible agency claim.

It follows that Plaintiffs have failed in their Complaint to sufficiently plead any vicarious liability theory by which to link KWRI to the current action and Plaintiffs’ entire Complaint as against KWRI should be dismissed with prejudice. In addition, each of Plaintiffs’ individual claims against KWRI are irreparably defective.

1 **C. Plaintiffs' Securities Fraud Claims (Counts 3 and 4) are Time-Barred as a**
 2 **Matter of Law**

3 Where facts and dates alleged in the Complaint indicate the claim is time barred by the
 4 statute of limitations, a motion to dismiss for failure to state a claim lies. *Jablon v. Dean Witter*
 5 & Co., 614 F.2d 677, 682 (9th Cir. 1980). Plaintiffs' Opposition does not even address KWRI's
 6 argument that Plaintiffs' securities fraud claims are barred by the applicable three year statute of
 7 limitations, apparently conceding the deficiency of the claim.

8 15 U.S.C. § 77m requires that securities fraud claims under the 1933 and 1934 Acts (15
 9 U.S.C. §§ 77l and 78j respectively) must be brought **no later than three years after the offer**
 10 **or sale giving rise to the plaintiff's claim.** The three year limit is a statute of repose and
 11 equitable tolling does not apply. *Lampf, Pleva, Lipkind, Prupis & Pettigrew v. Gilbertson* 501
 12 U.S. 350, 363 (1991). The sale at issue is Plaintiffs' investment into the Solomon Towers
 13 project. The date of the sale occurred no later than the date the Solomon Towers Operating
 14 Agreement was executed – March 3, 2005. The Operating Agreement memorialized the
 15 investment and was made an express part of the Complaint. Complaint, Exhibit C. Plaintiffs did
 16 not file their action until April 30, 2008, rendering Plaintiffs' securities fraud claims barred as a
 17 matter of law.

18 In addition to being time barred, Plaintiffs fail to sufficiently plead the elements
 19 necessary to assert claims under the 1933 and 1934 Acts. Recognizing their own Complaint's
 20 deficiencies, Plaintiffs responded to KWRI's argument that KWRI is not a permissible defendant
 21 under the 1933 Act as it is limited to defendants that directly or actively participated in the
 22 security sale (*Pinter v. Dahl* 486 U.S. 622 (1988)), admitting that "KWRI may be correct when
 23 they claim that they did not make any direct misrepresentations in connection with the sale of
 24 securities." Opp., 11:24-26.

25 **D. Plaintiffs' Complaint Fails to Sufficiently State a RICO Claim for Relief As**
 26 **Against KWRI (Count 3)**

27 Plaintiffs' RICO claim against KWRI (Conspiracy to Commit RICO violations, section
 28 1962(d)) is deficient for the following reasons: (1) it fails to allege the necessary elements of a
 "predicate act"; (2) if fails to sufficiently plead "enterprise"; (3) if fails to sufficiently plead

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“pattern of racketeering activity”; and (4) if fails to sufficiently plead damages. *See* 18 U.S.C. § § 1962(c), 1964(c); *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). That Plaintiffs’ Opposition barely addresses only two of the deficiencies identified, “predicate act” and “pattern of racketeering,” solidifies that Plaintiffs cannot, even through amendment, plead the necessary elements of a RICO claim as against KWRI. Plaintiffs’ Opposition simply restates the requirements for asserting a RICO claim, though fails to reference a single allegation in the Complaint that satisfies the requirements. Opp., 10:7-28, 11:1-4.

Plaintiffs’ only attempt at responding to KWRI’s argument that predicate acts are not sufficiently pled, is that the acts, which are to be pled with specificity, should somehow be implied. *Howard v. America Online, Inc.*, 208 F.3d 741, 750 (4th Cir. 2000), citing *Associated Gen. Contractors of America v. Metropolitan Water Dist.*, 159 F.3d 1178, 1181 (9th Cir. 1998); Opp., 10:27-28. Plaintiffs’ argument as to the “pattern” requirement ignores that the Complaint fails to identify with specificity the multiple predicate acts necessary to create a pattern, and also the requirement that a pattern must be both forward and backward looking. 8 U.S.C. § 1961(5); *H.J. Inc. v. Northwestern Telephone Co.*, 492 U.S. 229, 236-243 (1989).

Plaintiffs’ Complaint is devoid of any specific allegations that KWRI conspired to commit RICO violations. Even assuming *arguendo* that Plaintiffs had sufficiently pled vicarious liability, the Complaint’s defects also preclude a RICO claim against KWRI’s purported agents. As evidenced by their Opposition’s failure to even suggest that the claim could be cured, Count 3 as against KWRI should be dismissed with prejudice.

E. Plaintiffs’ Complaint Fails to Sufficiently State a Claim for Relief Under California Business & Professions Code § 17200 (Count 6)

Plaintiffs’ Opposition completely fails to address the deficiencies in their section 17200 claim, demonstrating that the claim cannot be cured and should be dismissed without prejudice. Plaintiffs’ section 17200 claim conclusorily alleges that all defendants engaged in fraudulent business practices in violation of Section 17200. In federal court, section 17200 claims grounded in fraud must be pled with particularity. *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1103 (9th Cir. 2003). Plaintiffs’ section 17200 claim completely lacks any particularized allegations as to

1 KWRI or any of KWRI's purported agents, fails to put KWRI on notice of the particular
2 misconduct alleged and therefore should be dismissed.

3 **F. Plaintiffs' Complaint Fails to Sufficiently State a Claim for Relief for**
4 **Conspiracy (Count 11)**

5 Plaintiffs' Complaint fails to sufficiently plead a conspiracy cause of action against
6 KWRI, alleging only that KWRI furthered a conspiracy by acting as the agent and broker in the
7 "wash sale" transaction. Complaint, ¶¶ 157, 160. Plaintiffs' conspiracy claim is premised on a
8 conspiracy to defraud, therefore the heightened pleading standards of FRCP 9(b) apply.
9 Plaintiffs' Opposition ignores the defects of the claim and further provides no bases for allowing
10 leave to amend. Plaintiffs' claim for relief for conspiracy should also be dismissed.

11 **G. Plaintiffs' Complaint Fails to State a Claim for Relief under California**
12 **Corporations Code sections 25501, 25401, 25504, 25503, 25102(F),**
13 **25110 (Counts 16 and 18)**

14 Corporations Code sections 25501, 25401, 25403, 25504, 25105(F) and 25510 comprise
15 the Corporate Securities Law of 1968, which is an anti-fraud provision, triggering the heightened
16 pleading standard. Plaintiffs' Complaint does not state a claim for relief as against KWRI for
17 any Corporations Code violations, and Plaintiffs' Opposition provides no bases for granting
18 leave to amend Counts 16 or 18.

19 Plaintiffs' Opposition expressly concedes that Plaintiffs' claims under sections 25401 and
20 25501 cannot survive. Sections 25401 and 25501 require the allegation and existence of strict
21 privity between the actual seller and a purchaser of a security, and the Opposition states that
22 "Plaintiffs have not alleged that KWRI directly sold them securities." *In re Disonics Securities*
23 *Litigation*, 599 F.Supp. 447 (N.D. Cal. 1984); *Employers Ins. of Wausau v. Musick, Peeler &*
24 *Garrett*, 871 F.Supp.381 (S.D. Cal.1994); Opp., 13:16-17.

25 Plaintiffs' Opposition does not even address KWRI's argument regarding sections 25110,
26 25503 or 25102(F). Section 25110 prohibits selling or offering to sell transactions in an issuer
27 transaction. Plaintiffs' Complaint fails to allege that KWRI or any of its purported agents are
28 issuers of securities as the term is defined in section 25010 and further fails to allege that KWRI
is a seller of securities. It follows that section 25110 and related sections 25503 (provides for

1 damages associated with section 25110 violations) and 25102(F) (regulates security sales and
2 issuer transactions exempted from 25110) should be dismissed with prejudice.

3 Plaintiffs for the first time in their Opposition allege a violation of section 25504.1. That
4 section is not alleged in the Complaint and should not be considered by this Court. The
5 Opposition's discussion of section 25504 in no way rectifies the Complaint's defective pleadings
6 under section 25504. In order to state a claim under section 25504, Plaintiff must allege that
7 KWRI controlled persons who violated sections 25501 and 25503 and/or who materially
8 assisted, with an intent to deceive or defraud, persons who violated section 25401. Cal. Corp.
9 Code section 25504; *In re Activision Securities Litigation*, 621 F.Supp.415, 427 (N.D.Cal. 1985).
10 Plaintiffs' Complaint fails to make such allegations. Further, even if Plaintiffs prevailed on their
11 vicarious liability argument, which KWRI ardently disputes, Plaintiffs' section 25504 claim must
12 fail. The alleged fraudulent security sale in this dispute is the investment in Solomon Towers.
13 Plaintiffs' Complaint does not allege, because it cannot, that any of KWRI's purported agents
14 (Zelevnak or ZPM) sold the investment to Plaintiffs in violation of sections 25501, 25503 or
15 25504. Rather, Plaintiffs allege that defendants Buchholz, Solomon Capital and Fischer sold
16 securities to Plaintiffs in violation of the Corporations Code. Complaint, ¶ 49. Counts 16 and 18
17 cannot be cured as against KWRI and should be dismissed with prejudice.

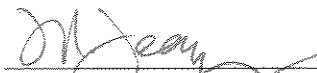
18 III. CONCLUSION

19 Neither Plaintiffs' Complaint nor their Opposition provides any valid bases for a legal
20 action against KWRI. On their face, the pleadings fail to state any claims for relief against
21 KWRI. Accordingly, KWRI respectfully requests this Court dismiss all of Plaintiffs' claims
22 against KWRI, with prejudice.

23 GORDON & REES LLP

24 Dated: Aug. 21, 2008

25 By:


26 DION N. COMINOS
MEAGEN E. LEARY
27 Attorneys for Defendant KELLER
WILLIAMS REALTY, INC.

1 : Steve Trachsel, et al. v. Ronald Buchholz, et al.

2 United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

3 **PROOF OF SERVICE**

4 I am a citizen of the United States. My business address is 275 Battery Street, San
5 Francisco, CA 94111. I am employed in the City and County of San Francisco where this
service occurs. I am over the age of 18 years and not a party to the within action.

6 On August 21, 2008, following ordinary business practice, I served a true copy of the
7 foregoing document(s) described as:

8 **DEFENDANT KELLER WILLIAMS REALTY, INC.'S REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS COUNTS 3, 4, 5, 6, 11, 16, AND 18 OF PLAINTIFFS' COMPLAINT**

9 ☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM:** with the United States
10 District Court, Northern District, to all parties listed on the court's proof of electronic
service.

11 ☐ **BY FACSIMILE:** by transmitting by facsimile to the number(s) listed above to the
12 fax number(s) set forth below, or as stated on the attached service list, on this date
before 5:00 p.m.

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14 to the offices of the addressee(s).

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the United States mail at Sacramento, California to the offices of the addressee(s)
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17 ☐ **OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to an
overnight delivery carrier with delivery fees provided for, addressed to the person(s)
on whom it is to be served.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on August 21, 2008 at San Francisco, California.

21 

22

Sandra Sarmiento

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San Francisco, CA 94111

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Attorneys for Defendant
 KELLER WILLIAMS REALTY, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY) CASE NO. C08-2248 RMW
 TOWERS, LLC, a California corporation, THOMAS) [Assigned Judge: Hon. Ronald Whyte]
 CIRrito, and individual, ATOCHA LAND, LLC,)
 a Delaware limited liability company, MICHAEL)
 CIRrito, and individual, and CIRrito) **DEFENDANT KELLER WILLIAMS**
 HOLDINGS, LLC, a Delaware limited liability) **REALTY, INC.'S OBJECTIONS TO**
 company,) **EXTRINSIC EVIDENCE**
) **SUBMITTED IN PLAINTIFFS'**
) **OPPOSITION, AND MOTION TO**
) **STRIKE EXTRINSIC EVIDENCE**

Plaintiffs,

vs.

RONALD BUCHHOLZ, CHARICE FISCHER,) Accompanying Papers: Reply in
 RDB DEVELOPMENT, LLC, a Nevada limited) Support of Motion to Dismiss;
 liability company, SOLOMON CAPITAL, LLC, a) [Proposed] Order Striking Extrinsic
 Nevada limited liability company, JONATHON) Evidence
 VENTO, GRACE CAPITAL, LLC, dba GRACE)
 COMMUNITIES, an Arizona limited liability)
 company, DONALD ZELEZNAK, Z-LOFT, LLC,)
 an Arizona limited liability company, ZELEZNAK)
 PROPERTY MANAGEMENT, LLC dba KELLER)
 WILLIAMS REALTY, INC., a Texas corporation,)
 and DOES 1-50, inclusive,)

Defendants.

Hearing Date: September 5, 2008
 Time: 9:00 A.M.
 Location: Courtroom 6
 Judge: Hon. Ronald Whyte

Defendant KELLER WILLIAMS REALTY, INC. ("KWRI") objects to the following
 extrinsic evidence referred to and cited by Plaintiffs in their Opposition to Defendant's Rule
 12(b)(6) Motion to Dismiss, and requests that this Court strike such evidence from Plaintiffs'
 Opposition to KWRI's Motion to Dismiss:

1 1. Declaration of Thomas Cirrito in Support of Plaintiffs' Opposition to KWRI's
2 Motion to Dismiss, in its entirety.;

3 2. Declaration of Jesshill E. Love in Support of Plaintiffs' Opposition to KWRI's
4 Motion to Dismiss, in its entirety;

5 3. Exhibit A attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
6 Opposition to KWRI's Motion to Dismiss, in its entirety;

7 4. Exhibit B attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
8 Opposition to KWRI's Motion to Dismiss, in its entirety;

9 5. Exhibit C attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
10 Opposition to KWRI's Motion to Dismiss, in its entirety.

11 The grounds for KWRI's objections to the above-referenced extrinsic evidence, and
12 motion to strike such evidence is that the face of the plaintiffs' complaint and the exhibits
13 attached thereto control the Rule 12(b)(6) inquiry. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479
14 (9th Cir.1996); *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.1995).
15 The district court cannot consider "new" facts alleged in plaintiff's opposition papers. *Schneider*
16 *v. California Dept. of Corrections* 151 F.3d 1194, 1197 (9th Cir. 1998) (citing 2 Moore's Federal
17 Practice, § 12.34[2] (Matthew Bender 3d ed.) ("The court may not ... take into account additional
18 facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do
19 not constitute pleadings under Rule 7(a)."). The declarations of Thomas Cirrito and Jesshill E.
20 Love, and the exhibits thereto, clearly exceed the boundaries of Plaintiffs' Complaint and the
21 exhibits to the Complaint and are thus improper for consideration by this Court.
22

23 Based on the foregoing, KWRI requests that the declarations of Thomas Cirrito and
24


25 ///
26

27 ///
28

Jesshill Love, and the exhibits to Mr. Love's declaration be stricken from the record.

Dated: August 21, 2008

GORDON & REES LLP

By: 
DION N. COMINOS
MEAGEN E. LEARY
Attorneys for Defendant KELLER
WILLIAMS REALTY, INC.

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 : Steve Trachsel, et al. v. Ronald Buchholz, et al.
 2 United States District Court Northern District of California, San Jose Division
 Case No. No. C08 02248

3 **PROOF OF SERVICE**

4 I am a citizen of the United States. My business address is 275 Battery Street, San
 Francisco, CA 94111. I am employed in the City and County of San Francisco where this
 5 service occurs. I am over the age of 18 years and not a party to the within action.

6 On August 21, 2008, following ordinary business practice, I served a true copy of the
 foregoing document(s) described as:

7 **DEFENDANT KELLER WILLIAMS REALTY, INC.'S OBJECTIONS TO EXTRINSIC
 8 EVIDENCE SUBMITTED IN PLAINTIFFS' OPPOSITION, AND MOTION TO STRIKE
 9 EXTRINSIC EVIDENCE**

10 ☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM:** with the United States
 District Court, Northern District, to all parties listed on the court's proof of electronic
 service.

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 12 fax number(s) set forth below, or as stated on the attached service list, on this date
 before 5:00 p.m.

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16 ☐ **OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to an
 17 overnight delivery carrier with delivery fees provided for, addressed to the person(s)
 on whom it is to be served.

18
 19 I declare under penalty of perjury under the laws of the State of California that the
 foregoing is true and correct.

20 Executed on August 21, 2008 at San Francisco, California.

21 

22 _____
 Sandra Sarmiento

Gordon & Rees LLP
 Embarcadero Center West
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY TOWERS, LLC, a California corporation, THOMAS CIRRITO, and individual, ATOCHA LAND, LLC, a Delaware limited liability company, MICHAEL CIRRITO, and individual, and CIRRITO HOLDINGS, LLC, a Delaware limited liability company,)	CASE NO. C08-2248 RMW [Assigned Judge: Hon. Ronald Whyte]
)	
)	
)	[PROPOSED] ORDER STRIKING EXTRINSIC EVIDENCE
)	
Plaintiffs,)	
)	
vs.)	
)	
RONALD BUCHHOLZ, CHARICE FISCHER, RDB DEVELOPMENT, LLC, a Nevada limited liability company, SOLOMON CAPITAL, LLC, a Nevada limited liability company, JONATHON VENTO, GRACE CAPITAL, LLC, dba GRACE COMMUNITIES, an Arizona limited liability company, DONALD ZELEZNAK, Z-LOFT, LLC, an Arizona limited liability company, ZELEZNAK PROPERTY MANAGEMENT, LLC dba KELLER WILLIAMS REALTY, INC., a Texas corporation, and DOES 1-50, inclusive,)	
)	
Defendants.)	

Upon consideration of Defendant KELLER WILLIAMS REALTY, INC.'s ("KWRI")
Objections to Extrinsic Evidence, and for good cause shown, it is hereby ORDERED that the
following evidence is to be stricken from Plaintiffs' Opposition to KWRI's Motion to Dismiss:

1. Declaration of Thomas Cirrito in Support of Plaintiffs' Opposition to KWRI's

1 Motion to Dismiss, in its entirety,;

2
3 2. Declaration of Jesshill E. Love in Support of Plaintiffs' Opposition to KWRI's
4 Motion to Dismiss, in its entirety;

5 3. Exhibit A attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
6 Opposition to KWRI's Motion to Dismiss, in its entirety;

7 4. Exhibit B attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
8 Opposition to KWRI's Motion to Dismiss, in its entirety;

9
10 5. Exhibit C attached to Declaration of Jesshill E. Love in Support of Plaintiffs'
11 Opposition to KWRI's Motion to Dismiss, in its entirety.

12
13 **IT IS SO ORDERED.**

14
15 DATED: _____

16
17 _____
18 HONORABLE RONALD M. WHYTE
19 UNITED STATES DISTRICT JUDGE
20
21
22
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27
28

1 : Steve Trachsel, et al. v. Ronald Buchholz, et al.

2 United States District Court Northern District of California, San Jose Division
Case No. No. C08 02248

3 **PROOF OF SERVICE**

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service occurs. I am over the age of 18 years and not a party to the within action.

6 On August 21, 2008, following ordinary business practice, I served a true copy of the
7 foregoing document(s) described as:

8 **[PROPOSED] ORDER STRIKING EXTRINSIC EVIDENCE**

9 ☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM:** with the United States
District Court, Northern District, to all parties listed on the court's proof of electronic
service.

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18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on August 21, 2008 at San Francisco, California.

21 

22 Sandra Sarmiento

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